



latter, Applicants point out that no *prima facie* rejection has been adduced for the instant Office Action.

On pages 5-6 of the Office Action, the Office provisionally rejected claims 1, 2, 8, and 9 on the ground of non-statutory obviousness type double patenting over claims 1-8 and 12 of co-pending Application No. 10/932,182 ['182] or claims 1-8 and 12 of co-pending Application No. 11/217,529 ['529].

Without acquiescing as to the merits of the rejection, Applicants respectfully offer to file a Terminal Disclaimer in the future should the provisional rejection be made final. However, to require a Terminal Disclaimer at this time is premature, as both the '182 and '529 applications have yet to be examined. Additionally, Applicants point out that the claims in the instant application already have been amended and recite limitations that differ from the claims pending in both the '182 and '529 application. Specifically, claim 1 of the instant application is, for example, directed to "selected genes", while claim 1 in the '182 and '529 applications are respectively directed to "whole genome" and "genome sequences". Applicants assert that the claims from the '182 and '529 applications are therefore distinguishable from the instant claims. Therefore, Applicants submit that they have fully complied with the Office's position allegedly requiring Applicants to file a Terminal Disclaimer or to distinguish the claims or to offer to file a Terminal Disclaimer.

In conclusion, this amendment and reply is believed to be a full response to the outstanding Office Action. Should any issues remain outstanding or if there are any questions concerning this paper, or the application in general, the Examiner is invited to telephone the undersigned representative at the Examiner's earliest convenience.